

be processed as set forth in paragraph (f) of this section.

**§ 1951.914 Servicing shared appreciation agreements.**

(a) [Reserved]

(b) *When shared appreciation is due.* For agreements entered into on or after August 18, 2000, the term of the agreement is five years. Shared appreciation is due at the end of either a five or ten year term, as specified in the Shared Appreciation Agreement, or sooner, if one of the following events occur:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due.* (1) The value of the real estate security at the time of maturity of the Shared Appreciation agreement (current market value) shall be the appraised value of the security at the highest and best use less the increase in the value of the security resulting from capital improvements added during the term of the Shared Appreciation Agreement (contributory value) as set out herein. The current market value of the real estate security property will be determined based on a current appraisal in accordance with 7 CFR § 761.7 and subject to the following:

(i) Upon request, the borrower will identify any capital improvements that have been added to the property since the execution of the Shared Appreciation Agreement.

(ii) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the Shared Appreciation Agreement in order to make deductions for that value under this subsection.

(iii) For calculation of Shared Appreciation recapture, the remaining contributory value of capital improvements added during the term of the Shared Appreciation Agreement will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(A) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or the living area square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it added value) will be deducted from the current market value. Living area square footage will not include square footage of patios, porches, garages, and similar additions.

(B) The item is an improvement to the real estate with a useful life of over 1 year and is affixed to the property. The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax records. The borrower must provide copies of appropriate tax documentation to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized on borrower income taxes.

(2) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the Shared Appreciation Agreement was signed if such value cannot be obtained through another method.

(3) Shared appreciation will be due if there is a positive difference between the market value of the security property at the time of calculation and the market value of the security property as of the date of the SAA. The maximum appreciation requested will not be more than the total amount written down. The amount of shared appreciation will be:

(i) 75% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occur within 4 years or less from the date of the SAA; or

(ii) 50% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occurs more than 4 years from the date of the SAA, or if the term of the SAA expires.

(4) [Reserved]

(5) When the full amount of the appreciation due under this section and any remaining FSA debt is paid in full and credited to the account, the borrower will be released from liability.

(6) Shared appreciation that will become due will be included in the amount owed to FSA, such as with any debt settlement. Nonamortized shared appreciation may be assumed and amortized on program or nonprogram terms based on the transferee's eligibility as contained in subpart A of part 1965 of this chapter.

(d) [Reserved]

(e) *Shared appreciation amortization.* Shared appreciation due under this section may be amortized to a Non-program amortized payment unless the amount is due because of acceleration or the borrower ceases farming. The amount due may be amortized as an SA amortized payment under the following conditions:

(1) The borrower must have a feasible plan as defined in §1951.906 including the SA amortized payment.

(2) The borrower must be unable to pay the shared appreciation, or obtain the funds elsewhere to pay the shared appreciation.

(3)-(4) [Reserved]

(5) The payment agreement term will be based on the borrower's repayment ability and the life of the security, not to exceed 25 years.

(6) The interest rate will be the SA amortization rate contained in RD Instruction 440.1 (available in any FSA office).

(7) A lien will be obtained on any remaining FSA security, or if there is no security remaining, the best lien obtainable on any other real estate or chattel property sufficient to secure the SA payment agreement, if available.

(8) The borrower will sign a payment agreement for each SA amortized payment established.

(9)-(10) [Reserved]

(11) If a borrower with an SA amortized payment also has outstanding Farm Loan Programs loan and becomes delinquent or financially distressed in accordance with §1951.906 or if a borrower with an SA amortized payment has no outstanding Farm Loan Programs loan and becomes delinquent on the SA amortized payment, the SA payment agreement may be reamortized in accordance with §1951.909.

(f) *Priority of collection application.* Proceeds from the sale of security property will first be applied to any prior lienholder's debt, then to any shared appreciation due, and to the balance of outstanding FLP loans in accordance with subpart A of this part.

(g) *Subordination.* Subordination of FSA's lien on property securing the Shared Appreciation Agreement may be approved and processed in accordance with subpart A of part 1965 of this chapter provided the prior lien debt is not increased.

(h) *Suspension of Recapture Payment Obligation under a Shared Appreciation Agreement.* (1) A borrower may request from a Farm Loan Program (FLP) servicing official, a suspension of the obligation to pay the recapture amount under a shared appreciation agreement, if:

(i) The shared appreciation agreement recapture payment is now due but there has been no agreement to pay the recapture payment;

(ii) The 10 year term of the agreement ends on or before December 31, 2000;

(iii) The secured real estate has not yet been conveyed so that the entire amount of the shared appreciation agreement recapture payment is due;

(iv) The borrower has complied with the other terms of the agreement;

(v) The borrower certifies in writing that the borrower is not able to pay the recapture amount;

(vi) The agreement or the obligations thereunder have not been accelerated and there are pending servicing rights under this subpart still available to the borrower; and

(vii) The Agency's mortgage which secures the agreement remains in effect for a period not less than the suspension period under this paragraph plus 3 additional years or the Agency

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determines that the mortgage can be extended for an additional 3 years beyond the suspension period.

(2) A request for suspension of the obligation to pay the recapture amount must be submitted in writing to the FLP servicing official after the borrower has received notification of the recapture amount due by the later of:

(i) 30 days after the borrower has received notification of the recapture amount due; or

(ii) May 24, 1999.

(3) The term of the suspension of the obligation to pay the recapture amount is 1 year.

(4) A suspension may be renewed by the Agency at the request of a borrower in writing not more than twice. Prior to renewal of a suspension, the Agency will determine, based on a Farm and Home Plan, the portion of the recapture amount the borrower is still unable to pay, or obtain credit to pay, from any other source (including nonprogram loans from the Agency, in accordance with this part), the suspension will be limited to such an amount. The Agency must also determine that the conditions prescribed in paragraphs (h)(1)(i) through (h)(1)(vi) are still met.

(5) The amount of the recapture payment suspended will accrue interest at a rate equal to the applicable rate of interest of Federal borrowing, as determined by the Agency.

(6) Thirty days before the end of the suspension period, the FLP Servicing Official shall inform the borrower by letter of the suspended amount, including accrued interest that is owed and the date such payment is due.

(7) At the end of the suspension period, the borrower will be obligated to pay the amount suspended, plus any accrued interest and the borrower will be so notified.

(8) If the real estate that is the subject of the Shared Appreciation Agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall be come immediately due and payable by the borrower in accordance with paragraph (c) of this section.

(9)–(10) [Reserved]

(11) Capital improvement deductions are available to a borrower on any unpaid recapture amount under an exist-

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ing Suspension Agreement in accordance with 1951.914(c).

[63 FR 6629, Feb. 10, 1998, as amended at 64 FR 19865, Apr. 23, 1999; 65 FR 50404, Aug. 18, 2000; 65 FR 81326, Dec. 26, 2000; 67 FR 7943, Feb. 21, 2002; 69 FR 5263, Feb. 4, 2004]

## § 1951.915 [Reserved]

### § 1951.916 Exception authority.

(a) *Administrator.* The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator, or upon request initiated by the appropriate Program Assistant Administrator. In certain situations such as a natural disaster, the Administrator may delegate this authority to specific State Director positions in certain states. In such cases, the State Director will exercise the delegation of authority upon the request of the County Supervisor with the recommendation of the District Director, rather than the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) *State Director.* The State Director may, in individual cases of extraordinary circumstances, make an exception to the requirement that attachments 2 or 4 of exhibit A of this subpart, as appropriate, must be completed and returned to the FmHA or its successor agency under Public Law 103–354 County Office with the appropriate forms and documents for a complete application within 60 days after receiving attachments 1 and 2 or 3 and 4 of exhibit A of this subpart. If the borrower requests additional time to submit a complete application or submits